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Issue 3

TRUST

A Glossary of Trust-Related Legal Terms

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TRUST

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Source: Black's Law Dictionary, Bryan A. Garner (ed.)
https://archive.org/details/blacks-law-dictionary-bryan-garner/page/1656/mode/1up

trust, n. (15c) 1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary). • For a trust to be valid, it must involve specific property, reflect the settlor's intent, and be created for a lawful purpose. The two primary types of trusts are private trusts and charitable trusts (see below). [Cases: Trusts § 1.] 2. A fiduciequitable duties to deal with it for another's benefit; the confidence placed in a trustee, together with the trustee's obligations toward the property and the beneficiary. • A trust arises as a result of a manifestation of an intention to create it. See fiduciary relationship under RELATIONSHIP. 3. 'Lhe property so held; corpus (1). "One must distinguish, .. . [in] countries where English is spoken, between a wide and a narrow sense of the word 'trust.' In the wide sense a trust exists when property is to be held or administered by one person on behalf of another or for some purpose other than his own benefit. ... In the narrow or strict sense a trust exists when the creator of the trust... hands over or is bound to hand over the control of an asset which, or the proceeds of which, is to be administered by another (the trustee or administrator) in his capacity as such for the benefit of some person (beneficiary) other than the trustee or for some impersonal object. A trust in this sense is a species of the genus 'trust' in the wide sense." Tony Honoré, The South African Law of Trusts §§ 1-2, at 1-3 (3d ed. 1985).

> *"Some courts and legal writers have defined a trust as a certain kind of right that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has in the trust property, thus looking at it from the point of view of the beneficiary. While it is true that the beneficiary has the right or interest described, the trust is something more than the right or interest of the beneficiary. The trust is the whole juridical device: the legal relationship between the parties with respect to the property that is its subject matter, including not merely the duties that the trustee owes to the beneficiary and to the rest of the world, but also the rights, privileges, powers, and immunities that the beneficiary has against the trustee and against the rest of the world. It would seem proper, therefore, to define the trust either as a relationship having certain characteristics stated in the definition or perhaps as a juridical device or legal institution involving such a relationship." 1 Austin W. Scott & William F. Fratcher, The Law of Trusts § 2.4, at 42 (4th ed. 1987).*
>
> *"In the strict, traditional sense, a trust involves three elements: (1) a trustee, who hold the trust property and is subject to deal with it for the benefit of one or more others; (2) one or more beneficiaries, to whom and for whose benefit the trustee owes duties with respect to the trust property; and (3) trust property, which is held by the trustee for the beneficiaries. In a more comprehensive sense, the trust purpose is often included in discussions of the elements of the trusts .... Although all of these elements are present in a complete trust, either or both of elements (1) and (2) above may be*

> *temporarily absent without destroying the trust or preventing its creation." Restatement (Third) of Trusts § 2 cmt. f (2003).*

A-B-Q trust. See bypass trust. A-B trust. See bypass trust.

accumulation trust. A trust in which the trustee must accumulate income and gains from sales of trust assets for ultimate disposition with the principal when the trust terminates. • Many states restrict the time over which accumulations may be made or the amount that may be accumulated. [Cases: Trusts § 280.]

active trust. A trust in which the trustee has some affirmative duty of management or administration besides the obligation to transfer the property to the beneficiary. --- Also termed express active trust; special trust; operative trust. Cf. passive trust. [Cases: Trusts § 135,]

Alaska trust. See asset-protection trust (1).

alimony trust. A trust in which the payor spouse transfers to the trustee property from which the payee spouse, as beneficiary, will be supported after a divorce or separation.

annuity trust. A trust from which the trustee must pay a sum certain annually to one or more beneficiaries for their respective lives or for a term of years, and must then either transfer the remainder to or for the use of a qualified charity or retain the remainder for such a use. • The sum certain must not be less than 5% of the initial fair market value of the property transferred to the trust by the donor. A qualified annuity trust must comply with the requirements of IRC (26 USCA) § 664, [Cases: Trusts § 281.]

asset-protection trust. 1. A trust designed specifically to insulate assets from the settlor's creditors. • When the trust is created using the law of a state, it is also termed a domestic asset-protection trust. It may also be referred to by the name of the specific state, e.g., Alaska trust, Delaware trust, or Nevada trust. If it is created under foreign law, even though the assets are within the United States, it is also termed an offshore asset-protection trust. 2. See self-settled trust.

bank-account trust. See Totten trust.

blended trust. A trust in which the beneficiaries are a group, with no member of the group having a separable individual interest. • Courts rarely recognize these trusts.

blind trust. (1969) A trust in which the settlor places investments under the control of an independent trustee, usu. to avoid a conflict of interest. • The beneficiary has no knowledge of the trust's holdings and no right to participate in the trust's management.

bond trust. A trust whose principal consists of bonds that yield interest income.

bypass trust. (1981) A trust into which just enough of a decedent's estate passes, so that the estate can take advantage of the unified credit against federal estate taxes. See 26 USCA § 2010, --- Also termed creditshelter trust; A-B trust; A-B-Q trust; marital life-estate trust. See unified estate-and-gift tax credit under TAX CREDIT.

charitable lead trust. An irrevocable trust made in favor of a charity and allowing the charity to receive income from the trust property for a specified period, after which the property reverts to the settlor's estate.

charitable-remainder annuity trust. A charitableremainder trust in which the beneficiaries receive for a specified period a fixed payment of 5% or more of the fair

market value of the original principal, after which the remaining principal passes to charity. --- Abbr. CRAT. --- Also termed charitable-remainder- trust retirement fund. [Cases: Charities C->6; Trusts C281]

charitable-remainder trust. A trust consisting of assets that are designated for a charitable purpose and paid over to the trust after the expiration of a life estate or intermediate estate. --- Abbr. CRT. --- Also termed split-interest trust. [Cases: Charities C->4.]

charitable-remainder-trust retirement fund. See charitable-remainder annuity trust.

charitable trust. (18c) A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity, • Charitable trusts are often eligible for favorable tax treatment. If the trust's terms do not specify a charity or a particular charitable purpose, a court may select a charity. See Uniform Trust Act § 405. --- Also termed public trust; charitable use. See charitable deduction under DEDUCTION; Cy PRES. Cf. private trust. [Cases: Charities C-> 1; Internal Revenue C4048; Taxation § 2337, 3328, 3488.]

Claflin trust. See indestructible trust.

Clifford trust. (1941) An irrevocable trust, set up for at least ten years and a day, whereby income from the trust property is paid to the beneficiary but the property itself reverts back to the settlor when the trust expires, • These trusts were often used by parents --- with their children as beneficiaries --- to shelter investment income, but the Tax Reform Act of 1986 eliminated the tax advantage by imposing the kiddie tax and by taxing the income of settlors with a reversionary interest that exceeds 5% of the trust's value. This term gets its name from Helvering v. Clifford, 309 U.S. 331, 60 S.Ct. 554 (1940). --- Also termed short-term trust. [Cases: Internal Revenue § 3362.]

common-law trust. See business trust under TRUST (4). community trust. See COMMUNITY TRUST. complete voluntary trust. See executed trust.

complex trust. 1. A trust having elaborate provisions. 2. See discretionary trust.

constructive trust. (18c) An equitable remedy that a court imposes against one who has obtained property by wrongdoing. • A constructive trust, imposed to prevent unjust enrichment, creates no fiduciary relationship. Despite its name, it is not a trust at all. --- Also termed implied trust; involuntary trust; trust de son tort; trust ex delicto; trust ex maleficio; remedial trust; trust in invitum. See trustee de son tort under TRUSTEE. Cf. resulting trust. [Cases: Trusts § 91-111]

> *"A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." Beatty v. Guggenheim Exploration Co., 122 N.E. 378, 380 (N.Y. 1919) (Cardozo, J.).*
>
> *"It is sometimes said that when there are sufficient grounds for imposing a constructive trust, the court 'constructs a trust.' The expression is, of course, absurd. The word 'constructive' is derived from the verb 'construe,' not from the verb 'construct.'. .. The court construes the circumstances in the sense that it explains or interprets them; it does not construct them." 5 Austin W. Scott & William F. Fratcher, The Law of Trusts § 462.4 (4th ed. 1987).*

contingent trust. An express trust depending for its operation on a future event.

credit-shelter trust. See bypass trust.

Crummey trust. A trust in which the trustee has the power to distribute or accumulate income and to give the beneficiary the right to withdraw an amount equal to the annual gift exclusion (or a smaller sum) within a reasonable time after the transfer. • This type of trust can have multiple beneficiaries and is often used when the beneficiaries are minors. Gifts to a Crummey trust qualify for the annual gift exclusion regardless of the age of the beneficiaries. The trust assets are not required to be distributed to the beneficiaries at age 21. 'The validity of this type of trust was established in Crummey v. Commissioner, 397 F.2d 82 (9th Cir. 1968). --- Also termed discretionary trust. See CRUMMEY POWER; annual exclusion under EXCLUSION, Cf. 2503(c) trust.

custodial trust. A revocable trust for which a custodial trustee is named to manage the assets for an incapacitated or disabled beneficiary. ¢ The beneficiary does not have to be disabled or incapacitated at the time the trust is created. An adult beneficiary who is not disabled or incapacitated may terminate the trust at any time before his or her disability, incapacity, or death.

declared trust. See express trust.

defective trust. A trust that is treated, for income-tax purposes, as if it were the same entity as the grantor, but for estate-tax purposes is treated as an entity separate from the grantor. • Typically a trust is an independent entity that is taxed separately from the settlor. Because trust income is taxed at higher rates than individual income, the settlor may intentionally create a defect in the trust terms so that the trust's income will be taxable to the grantor. This is achieved by violating the grantor-trust rules of IRC §§ 671-677 in a way that does not affect the completeness of the gift under IRC §§ 2035-2042. A violation renders the trust "defective" because the settlor must recognize the income even if the settlor does not actually receive it. The attribution of tax liability and payment of taxes on trust income do not give the grantor an ownership in the trust, which remains separate from the settlor's estate and is not subject to estate taxes. [Cases: Internal Revenue C4023.

Delaware trust. See asset-protection trust.

destructible trust. (1953) A trust that can be destroyed by the happening of an event or by operation of law.

directory trust. 1, A trust that is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into detail according to later specific directions, 2. See fixed trust.

direct trust. See express trust.

discretionary trust. (1837) \. A trust in which the settlor has delegated nearly complete or limited discretion to the trustee to decide when and how much income or property is distributed to a beneficiary. • This is perhaps the most common type of trust used in estate planning. [Cases: Trusts § 150, 177] 2. See Crummey trust. Cf. mandatory trust; CRUMMEY POWER.

domestic asset-protection trust. See asset-protection trust (1).

donative trust. A trust that establishes a gift of a beneficial interest in property for a beneficiary. • Most trusts are donative trusts. --- Also termed gratuitous trust. [Cases: Trusts C->35(1).]

donor-advised trust. A trust set up by a public charity using cash or other assets donated by a person who will act as a director of the trust. IRC (26 USCA) § 4966(d)(2). --- Also termed doner-advised fund.

dry trust. 1. A trust that merely vests legal title in a trustee and does not require that trustee to do anything, 2. See passive trust.

dynasty trust. A generation-skipping trust funded with the amount that is permanently exempt from generation-skipping tax and designed to last more than two generations. • In 2000, a settlor could contribute § 1 million to a dynasty trust. Almost half the states allow dynasty trusts, despite their potential for lasting more than 100 years. --- Also termed GST supertrust. [Cases: Internal Revenue § 4224.]

educational trust. 1. A trust to found, endow, or support a school. 2. A trust to support someone's education.

electing small-business trust. A trust of which the beneficiaries are individuals, estates, certain charitable organizations, or certain governmental] entities, who did not purchase an interest in the trust, and for which the trustee has elected to be taxed under special rules. IRC (26 USCA) § 1391 (e)(1). --- Abbr. ESBT.

equipment trust. See EQUIPMENT TRUST.

estate trust. A trust that is established to qualify a deceased spouse's property for the marital deduction. • The trustee may be given discretion to distribute principal or income to the donor's spouse if the donor also provides that, at the surviving spouse's death, any accumulated income and remaining principal must be distributed to the surviving spouse's estate. See marital deduction under DEDUCTION.

ex delicto trust (da-lik-toh). A trust that is created for an illegal purpose, esp. to prevent the settlor's creditors from collecting their claims out of the trust property.

executed trust. A trust in which the estates and interests in the subject matter of the trust are completely limited and defined by the instrument creating the trust and require no further instruments to complete them. --- Also termed complete voluntary trust. [Cases: Trusts C114.

executory trust (eg-zek-ya-tor-ee). (18c) A trust in which the instrument creating the trust is intended to be provisional only, and further conveyances are contemplated by the trust instrument before the terms of the trust can be carried out. --- Also termed imperfect trust. [Cases: Trusts C->114.]

express active trust. See active trust.

express private passive trust. A trust in which land is conveyed to or held by one person in trust for another, without any power being expressly or impliedly given to the trustee to take actual possession of the land or exercise any ownership rights over it, except at the beneficiary's direction. {Cases: Trusts <=> 136.]

express trust. (18c) A trust created with the settlor's express intent, usu. declared in writing; an ordinary trust as opposed to a resulting trust or a constructive trust. --- Also termed direct trust; declared trust. [Cases: Trusts C->1-61.5,]

family-pot trust. A trust in which all the assets are kept in a single fund for the trustee to use for multiple beneficiaries (usu. children). • Family-pot trusts are typically testamentary and used to administer a donor's property until the donor's minor children have completed their education.

family trust. A trust created to benefit persons who are related to one another by blood, affinity, or law.

fixed trust. A trust in which the trustee may not exercise any discretion over the trust's management or distributions. --- Also termed directory trust; nondiscretionary trust.

foreign-situs trust (st-tas). A trust created under foreign law. • This type of trust usu. has no significant income-tax benefits and is subject to greater reporting requirements than a domestic trust. Because creditors cannot easily reach the foreign trust's assets, it is frequently used as a means of asset-protection. --- Also termed foreign trust; offshore trust.

general trust. See passive trust.

generation-skipping trust. (1976) A trust that is established to transfer (usu. principal) assets to a skip person (a beneficiary more than one generation removed from the settlor). • The transfer is often accomplished by giving some control or benefits (such as trust income) of the assets to a nonskip person, often a member of the generation between the settlor and skip person. This type of trust is subject to a generation-skipping transfer tax. IRC (26 USCA) §§ 2601 et seq. See DEEMED TRANSFEROR; GENERATION-SKIPPING TRANSFER; generation-skipping transfer tax under TAX; SKIP PERSON. Cf. dynasty trust. [Cases: Internal Revenue C->4224.]

governmental trust. 1. A type of charitable trust established to provide a community with facilities ordinarily supplied by the government, esp. by a municipality, and to promote purposes that are sufficiently beneficial to the community to justify permitting the property to be perpetually devoted to those purposes. ¢ Examples of such facilities include public buildings, bridges, streets, parks, schools, and hospitals. 2. A type of charitable trust established for general governmental or municipal purposes, such as defraying the expenses of a governmental entity or paying the public debt. Restatement (Second) of Trusts §§ 373, 374 (1959).

grantor-retained annuity trust. An irrevocable trust into which the grantor transfers property in exchange for the right to receive fixed payments at least annually, based on original fair market value of the property transferred. • At the end of the specified time, the principal passes to a noncharitable beneficiary such as the grantor's child or grandchild. Essentially, the grantor makes to the remainderman a current gift of the right to trust assets at a specified date in the future. --- Abbr. GRAT.

grantor-retained income trust. A trust in which a gift's value can be reduced by the grantor's retaining an income interest, for a specified time, in the gifted property, • At the end of the specified time, the principal passes to a noncharitable beneficiary such as the grantor's child or grandchild. Essentially, the grantor makes to the remainderman a current gift of the right to trust assets at a specified date in the future. --- Sometimes shortened to retained income trust. --- Abbr. GRIT.

grantor-retained unitrust. An irrevocable trust into which the grantor transfers property in exchange for the right to receive annual payments, the amount of which fluctuates based on the increase or decrease in the value of the property transferred. --- Abbr. GRUT. Cf. grantor-retained annuity trust.

grantor trust. A trust in which the settlor retains control over the trust property or its income to such an extent that the settlor is taxed on the trust's income. • The types of controls that result in such tax treatment are set out in IRC (26 USCA) §§ 671-677. An example is the revocable trust.

gratuitous trust. See donative trust. GST supertrust. See dynasty trust.

honorary trust. (1844) A noncharitable trust that is of doubtful validity because it lacks a beneficiary capable of enforcing the trust. • Examples include trusts for the care and support of specific animals, or for the care of certain graves. The modern trend is to recognize the validity of such trusts, if the trustee is willing to accept the responsibility. If the trustee fails to carry out the duties, however, a resulting trust arises in favor of the settlor's residuary legatees or next of kin. [Cases: Trusts § 1.]

Ilinois land trust. See land trust.

illusory trust. (1939) An arrangement that looks like a trust but, because of powers retained in the settlor, has no real substance and is not a completed trust. [Cases: Trusts § 1.] imperfect trust. See executory trust.

implied trust. 1. See constructive trust. 2. See resulting trust.

indestructible trust. (1909) A trust that, because of the settlor's wishes, cannot be prematurely terminated by the beneficiary. --- Also termed Claflin trust.

insurance trust. A trust whose principal consists of insurance policies or their proceeds.

inter vivos trust (in-tar vi-vohs or vee-vohs). (1921c) A trust that is created and takes effect during the settlor's lifetime. --- Also termed living trust, Cf. testa- mentary trust. [Cases: Trusts § 1, 58-61.]

investment trust. See investment comipany under COMPANY, involuntary trust. See constructive trust.

irrevocable trust (i-rev-uh-kuh-buhl). (1837) A trust that cannot be terminated by the settlor once it is created. • In most states, a trust will be deemed irrevocable unless the settlor specifies otherwise. [Cases: Trusts §'59,]

land trust. A land-ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property, and draw income from the trust. --- Also termed I/linois land trust; naked land trust. [Cases: Trusts (> 140(1).]

life-insurance trust. A trust consisting of one or more life-insurance policies payable to the trust when the insured dies. [Cases: Trusts C-37.]

limited trust. A trust created for a limited period. Cf. perpetual trust.

liquidating trust. A trust designed to be liquidated as soon as possible. • An example is a trust into which a decedent's business is placed to safeguard the business until it can be sold.

living trust. See inter vivos trust.

mandatory trust. A trust in which the trustee must distribute all the income generated by the trust property to one or more designated beneficiaries. --- Also termed simple trust. Cf. discretionary trust.

marital-deduction trust. (1953) A testamentary trust created to take full advantage of the marital deduction; esp., a trust entitling a spouse to lifetime income from the trust and sufficient control over the trust to include the trust property in the spouse's estate at death. See marital deduction under DEDUCTION. [Cases; Internal Revenue § 4169,]

marital life-estate trust. See bypass trust. Massachusetts trust. See business trust under TRUST (4).

Medicaid-qualifying trust. (1989) A trust deemed to have been created in an effort to reduce someone's assets so that the person may qualify for Medicaid, and that will be included as an asset for purposes of determining the person's eligibility. • A person who wants to apply and qualify for Medicaid, but who has too many assets to qualify, will sometimes set up a trust --- or have a spouse or custodian set upa trust --- using the applicant's own assets, under which the applicant may be the beneficiary of all or part of the payments from the trust, which are distributed by a trustee with discretion to make trust payments to the applicant. Such a trust may be presumed to have been established for the purpose of attempting to qualify for Medicaid, and may be counted as an asset of the applicant, resulting in a denial of benefits and the imposition of a penalty period during which the applicant cannot reapply. Nonetheless, Medicaid rules allow three types of trusts that do not impair Medicaid eligibility, since the trust assets are not considered the beneficiary's property: Miller trust, pooled trust, and under-65 trust. [Cases: Health C->471(6).]

Miller trust. An irrevocable trust funded with the income of an incompetent beneficiary who seeks to qualify for Medicaid in a state with an income cap. • Funding is strictly limited to the beneficiary's income (from any source). The assets in the trust are not included in the beneficiary's estate for Medicaid purposes if the trust assets will be used to reimburse the state after the beneficiary's death. Trust distributions are kept below the income cap in order to preserve the beneficiary's Medicaid eligibility. This type of trust was first judicially sanctioned in Miller v. Ibarra, 746 F.Supp. 19 (D. Colo. 1990). --- Also termed Miller's trust; qualified income trust.

ministerial trust. See passive trust. minor's trust. See 2503(c) trust.

mixed trust. A trust established to benefit both private individuals and charities.

naked land trust. See land trust.

naked trust. See passive trust.

Nevada trust. See asset-protection trust (1). nominal trust. See passive trust.

nominee trust. 1. A trust in which the beneficiaries have the power to direct the trustee's actions regarding the trust property. 2. An arrangement for holding title to real property under which one or more persons or corporations, under a written declaration of trust, declare that they will hold any property that they acquire as trustees for the benefit of one or more undisclosed beneficiaries. --- Also termed (in sense 2) realty trust. [Cases: Trusts § 133-140,]

nondiscretionary trust. See fixed trust.

nongrantor-owner trust. A trust in which the beneficiary has an unrestricted power to vest the principal or interest in him or herself. IRC (26 USCA) § 678. --- Also termed 678 trust.

offshore asset-protection trust. See asset-protection trust (1), offshore trust. See foreign-situs trust.

onerous trust. A trust that places exceptionally heavy and time-consuming duties of responsibility and care on the trustee, often without providing for compensation. • Because of the burden and inequity of requiring the trust to be administered voluntarily, courts often grant a trustee a reasonable sum for the tasks performed.

oral trust. 1. A trust created by the settlor's spoken statements as opposed to a written agreement. • Trusts of real property must usu. be in writing (because of the statute of frauds). Trusts of personal property may be created orally but require clear and convincing evidence to show that an oral trust was created. Uniform Trust Act § 8407. --- Also termed parol trust. [Cases: Trusts § 17,] 2. A trust created by operation of law, such as a resulting trust or a constructive trust.

parol trust. See oral trust (1).

passive trust. A trust in which the trustee has no duty other than to transfer the property to the beneficiary. --- Also termed dry trust; general trust; nominal trust; simple trust; naked trust; ministerial trust; technical trust. See bare trustee under TRUSTEE. Cf. active trust. [Cases: Trusts C-> 136.]

pension trust. An employer-funded pension plan; esp., a pension plan in which the employer transfers to trustees amounts sufficient to cover the benefits payable to the employees. [Cases: Labor and Employment § 400.]

perpetual trust. A trust that is to continue as long as the need for it continues, such as for the lifetime of a beneficiary or the term of a particular charity. Cf. limited trust.

personal-residence trust. An irrevocable trust to which the settlor transfers ownership of his or her personal residence while retaining the right to live there for a specified term of years. • The trust cannot hold any assets other than the residence and proceeds resulting from damage to or destruction of the residence. Cf. qualified personal-residence trust. [Cases: Trusts cl personal trust. See private trust.

pet trust. An honorary trust that is established for the care and maintenance of a particular animal or group of animals. • Pet trusts are generally invalid because animals are incapable of compelling a trustee to act, and animals have no standing in law. Effectively, the trust has no beneficiary. But some states (e.g., Colorado) statutorily recognize these trusts as valid. Pet trusts are covered in the Uniform Trust Code (§ 408).

pooled-income fund. See POOLED-INCOME FUND.

pooled trust. An irrevocable, discretionary trust that (1) is established and managed by a nonprofit association, (2) is funded with the assets of disabled persons, and (3) maintains a separate trust account for each beneficiary, but (4) pools the trust assets for investment purposes. • If the trust provides for distribution of a deceased beneficiary's interest to the state in reimbursement of Medicaid expenditures, a pooled-trust beneficiary may be eligible for Medicaid benefits. The assets contributed to the trust for the individual's benefit are not treated as the beneficiary's property. --- Also termed pooled-assets trust. [Cases: Trusts § 11(1).]

pourover trust. (1981) An inter vivos trust that receives property (usu. the residual estate) from a will upon the testator's death. Cf. pourover will under WILL.

power-of-appointment trust. (1848) A trust in which property is left in trust for the surviving spouse. • The trustee must distribute income to the spouse for life, and the power of appointment is given to the spouse or to his or her estate. A power-of-appointment trust is commonly used to qualify property for the marital deduction. See marital deduction under DEDUCTION.

precatory trust (prek-uh-tor-ee). (1878) A trust that the law will recognize to carry out the wishes of the testator or grantor even though the statement in question is in the nature of an entreaty or recommendation rather than a command. [Cases: Trusts C229]

presumptive trust. See resulting trust.

private trust. A trust created for the financial benefit of one or more designated beneficiaries rather than for the public benefit; an ordinary trust as opposed to a charitable trust. • Three elements must be present for a private trust: (1) the demonstrated intent of the settlor, (2) trust property (as res), and (3) a certain beneficiary capable of enforcing the trust. --- Also termed personal] trust. Cf. charitable trust. [Cases: Trusts § 1,]

protective trust. A trust that is designed to protect the trust property to ensure the continued support of the beneficiary. [Cases: Trusts § 152.] "In a broad sense, a spendthrift, support, or other similarly protective trust is one created to provide a fund for the maintenance of the beneficiary and at the same time to secure it against the beneficiary's improvidence or incapacity." 76 Am. Jur. 2d Trusts § 121 (1992).

public trust. See charitable trust.

purchase-money resulting trust. A resulting trust that arises when one person buys property but directs the seller to transfer the property and its title to another. • Although a purchase-money resulting trust is properly understood as a court-imposed equitable remedy rather than as a true trust, the buyer is occasionally referred to as the "beneficiary" and the titleholder as the "trustee." --- Abbr. PMRT. [Cases: Trusts O=>72-83.]

QTIP trust (kyoo-tip). (1985) A trust that is established to qualify for the marital deduction. • Under this trust, the assets are referred to as qualified-terminable-interest property, or QTIP. See qualifiedterminable-interest property under PROPERTY. Cf. qualified domestic trust, [Cases: Internal Revenue C\--4169(4),]

qualified domestic trust. A trust for a noncitizen spouse qualifying for the marital deduction. See 26 USCA § 2056(d). --- Abbr. QDOT. See marital deduction under DEDUCTION. Cf. QTIP trust.

qualified income trust. See Miller trust.

qualified personal-residence trust. An irrevocable trust that is funded with cash and the personal residence of the grantor, who retains the right to dwell in the residence for a specified term of years. • The trust may receive and hold additional cash to pay for trust expenses, mortgage installments, and improvements to the residence. --- Abbr. QPRT. Cf. personalresidence trust. [Cases: Trusts § 1,]

qualified S-corporation trust. A trust that (1) owns stock in one or more S corporations, (2) distributes all income to one individual (who must be a United States citizen or resident), (3) requires only one beneficiary at a time, and (4) requires the income-beneficiary-elect to have the trust qualify as a QSST. • The trust is rarely termed a qualified subchapter-S corporation trust but the common abbreviation is QSST, not QSCT.

rabbicular trust. A rabbi trust that protects the trust assets against the claims of the employer's creditors by converting to a secular trust if the employer funding the trust becomes insolvent. • The term is a portmanteau word from rabbi and secular. Cf. rabbi trust; secular trust.

rabbi trust. Slang. An irrevocable grantor trust whose assets remain subject to the claims of the grantor's general creditors, and from which benefits are paid to the grantor's employees if a stipulated event occurs. • A rabbi trust is a form of nonqualified deferredcompensation plan. Because the trust can be reached by creditors, the participants can avoid being taxed on the constructive receipt of the

benefits held in the trust, Its name derives from the IRS letter ruling that approved its use by a synagogue. Priv. Ltr. Rul. 81-13107 (Dec. 31, 1980). Cf. rabbicular trust; secular trust. [Cases: Labor and Employment § 431.]

real-estate investment trust. See REAL-ESTATE INVESTMENT TRUST.

real-estate mortgage trust. See REAL-ESTATE MORTGAGE TRUST.

realty trust. See nominal trust (2), reciprocal trust. A trust arrangement between two parties in which one party is beneficiary of a trust established by the other party, and vice versa. • Such trusts are common between husband and wife.

remedial trust. See constructive trust.

resulting trust. (18c) A remedy imposed by equity when property is transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property. --- Also termed implied trust; presumptive trust. Cf. constructive trust. [Cases: Trusts § --62-90.]

retained income trust. See grantor-retained income trust.

revocable trust (rev-uh-kuh-buhl). A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed savings-account trust. See Totten trust. savings-bank trust. See Totten trust.

secret trust. An instrument, usu. a will, that appears to give an absolute gift to another although the donee has orally agreed with the grantor that he or she is to use the property for the benefit of some third party. • Courts admit evidence of the promise to prevent unjust enrichment and enforce it by imposing the remedy of a constructive trust upon the reneging "trustee." Cf. semi-secret trust. [Cases: Trusts § 35(3).]

secular trust. An irrevocable trust, funded by an employer, that protects an employee-beneticiary's deferred compensation from the claims of creditors during an employer's bankruptcy or insolvency. • The trust provides the employee-beneficiary with exclusive rights. The employee enjoys security since the trust is funded and the funds are beyond the reach of creditors and immune from forfeiture, but the employee cannot defer income recognition. Cf. rabbicular trust; rabbi trust.

self-settled trust. (1969) A trust in which the settlor is also the person who is to receive the benefits from the trust, usu. set up in an attempt to protect the trust assets from creditors, • In most states, such a trust will not protect trust assets from the settlor's creditors. Restatement (Second) of Trusts § 156 (1959). --- Also termed asset-protection trust.

semi-secret trust. An instrument that indicates who is to serve as a trustee but fails to identify either the beneficiary or the terms of the trust, or both. • Traditionally, this trust was deemed to fail for want of an ascertainable beneficiary. But the modern view is to provide the same relief as that given for a secret trust: to receive evidence of the donor's intent, including the intended beneficiary, and impose a constructive trust in his or her favor. Cf. secret trust. [Cases: Trusts > 1, 64]

shifting trust. An express trust providing that, upon a specified contingency, it may operate in favor of an additional or substituted beneficiary.

short-term trust. See Clifford trust.

simple trust. 1. See mandatory trust. 2. See passive trust.

678 trust. See nongrantor-owner trust. special-needs trust. See supplemental-needs trust. special trust. See active trust.

spendthrift trust. (1878) 1. A trust that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that interest; a trust by the terms of which a valid restraint is imposed on the voluntary or involuntary transfer of the beneficiary's interest. [Cases: Trusts C12, 141, 152.] 2. A similar trust in which the restraint on alienation results from a statute rather than from the settlor's words in the trust instrument. "Origin of the term 'spendthrift trust.' The phrase 'spendthrift trust' seems to have been first used, as might be expected, in Pennsylvania. The earliest instance in which a use of the phrase has been found was in 1875, when it appeared in the syllabus of a case, though the court did not use it in its opinion. Four years later, in Overman's Appeal! [88 Pa. 276 (1879)], the phrase is found in the auditor's report {in italics), while the opinion of the court in the same case refers to the trust in question as 'atrust for a spendthrift as it is termed' [id. at 278]. That the phrase had not become familiar by 1882 is indicated by Thackara v, Mintzer (100 Pa. 151 (1882)], where the head note refers to a 'spendthrift son trust,' but the court does not use that or any similar phrase. And in 1883, in the first edition of his Restraints on Alienation, John Chipman] Gray used the phrase only rarely, and then spoke rather apologetically of 'spendthrift trusts so called.' In the second edition of this book, published twelve years later, the use of the phrase is frequent." Erwin N. Griswold, Spendthrift Trusts § 33, at 32 (2d ed. 1947).

split-interest trust. See charitable-remainder trust. spray trust. See sprinkle trust.

sprinkle trust. A trust in which the trustee has discretion to decide how much will be given to each beneficiary. --- Also termed spray trust. See SPRINKLE POWER.

standby trust. A trust created to manage a person's assets while he or she is out of the country or disabled. Trusts § 14]

supplemental-needs trust. A trust established to provide supplemental income for a disabled beneficiary who is receiving or may be eligible to receive government benefits. • This type of irrevocable trust is often used by parents of disabled children to ensure the beneficiary's eligibility for government benefits by expressly prohibiting distributions that may be used for the beneficiary's food, shelter, or clothing. [Cases: Trusts § 11(1).]

support trust. (1946) A discretionary trust in which the settlor authorizes the trustee to pay to the beneficiary as much income or principal as the trustee believes is needed for support, esp. for "comfortable support" or "support in accordance with the beneficiary's standard of living." • The beneficiary's interest cannot be voluntarily transferred, but creditors who provide necessaries can usu. reach it; general creditors cannot. [Cases: Trusts § 127.]

technical trust. See passive trust. tentative trust. See Totten trust.

testamentary trust (tes-to-men-ta-ree or -tree). (1832) A trust that is created by a will and takes effect when the settlor (testator) dies. --- Also termed trust under will. Cf. inter vivos trust. [Cases: Wills § 669-694.]

Totten trust. (1931) A revocable trust created by one's deposit of money, typically in a savings account, in the depositor's name as trustee for another. • A Totten trust is an early form of "pay on death" account, since it creates no interest in the beneficiary unless the account remained at the depositor's death. Its name derives from the earliest decision in which the court approved the concept, even though the formalities of will execution were not satisfied: [1 re Totten, 71 N.E. 748 (N.Y, 1904), A Totten

trust is commonly used to indicate a successor to the account without having to create a will, and thus it is a will substitute. --- Also termed tentative trust; bank-account trust; savings-account trust; savings-bank trust, trustee bank account, [Cases: Trusts § 34(1).] "A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor, It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or same decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor.\" /n re Totten, 179 N.Y. 112, 125-26 (1904) (Vann, J.).

transgressive trust. A trust that violates the rule against perpetuities. See RULE AGAINST PERPETUITIES.

trust de son tort (da sawn [or son] tor[t]). See constructive trust.

trust ex delicto. See constructive trust. trust ex maleficio. See constructive trust.

trust for support. A trust that, by its terms, provides that the trustee must pay or apply only as much of the income and principal as is necessary for the education and support of the beneficiary. [Cases: Trusts § 276, 280]

trust in invitum. See constructive trust.

trust under will. See testamentary trust.

2503(b) trust. A trust that requires a distribution of income to the beneficiary at least annually, and provides that gifts to the trust qualifying as gifts of a present interest become eligible for the annual gift-tax exclusion. • It is named after the section of the IRS code on which it is based. IRC (26 USCA) § 2503(b). [Cases: Internal Revenue (7->4206.]

2503(c) trust. A trust with only one beneficiary, who must be a minor and must have the power to withdraw all assets from the trust upon attaining the age of 21. • 'This type of trust derives its name from the requirements set forth in IRC (26 USCA) § 2503(c). Although the trust may continue after the beneficiary turns 21, gifts to the trust will no longer qualify for the annual exclusion if the beneficiary has no immediate right to withdraw the gift. --- Also termed minor's trust. [Cases: Internal Revenue § 4206.30.]

under-65 trust. A discretionary trust established for the sole benefit of a Medicaid recipient who is under the age of 65, § This type of trust may be established by anyone except the beneficiary, who must be younger than 65 years old at the time of creation. The assets in trust will not be included in the beneficiary's estate for purposes of determining Medicaid eligibility. The beneficiary may receive distributions from the trust during life, but any balance remaining in the trust must be used to reimburse the state for the beneficiary's Medicaid expenditures.

unit-investment trust. 1. A trust in which funds are pooled and invested in income-producing securities. • Units of the trust are sold to investors, who maintain an interest in the trust in proportion to their investment. 2. An investment company that gives a shareholder an undivided interest in a fixed pool of securities held by the trustee. • This type of company can be organized in several ways (as by trust indenture, contract of custodianship or agency, or similar instrument), but is most commonly organized with a trust indenture. Such a company does not have a board of

directors and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 USCA § 80a-4. See investment company under COMPANY.

unitrust. (1971) A trust from which a fixed percentage of the fair market value of the trust's assets, valued annually, is paid each year to the beneficiary. [Cases: Trusts (>276,]

voluntary trust. 1. A trust that is not founded on consideration. • One having legal title to property may create a voluntary trust by (1) declaring that the property is to be held in trust for another, and (2) transferring the legal title to a third person who holds it for the benefit of the first person. [text unclear in source — the remainder of this definition could not be reliably reconstructed]

voting trust. A trust used to hold shares of voting stock in a closely held corporation, usu. transferred from a parent to a child, and empowering the trustee to exercise the right to vote. • The trust acts as custodian of the shares but is not a stockholder. Cf. voTInG Group. [Cases: Corporations § 198.1(1),] "At common law there was great suspicion of voting trusts, One commentator described a voting trust as 'little more than a vehicle for corporate kidnapping.' This attitude has largely disappeared, State statutes now uniformly recognize the validity of voting trusts and they have received a more hospitable judicial reception." Robert W. Hamilton, The Law of Corporations in a Nutshell 199 (3d ed. 1991).

wasting trust. A trust in which the trust property is gradually depleted by periodic payments to the beneficiary.

4. A business combination that aims at monopoly. See ANTITRUST LAW.

business trust. A form of business organization, similar to a corporation, in which investors receive transferable certificates of beneficial interest instead of stock shares. --- Also termed Massachusetts trust; common law trust Cases IRS 4206 Joint Stock Companies and Business Trusts C->1, 8.]

> *"The business trust was developed in Massachusetts from 1910 to 1925 to achieve limited liability and to avoid restrictions then existing there on a corporation's acquiring and developing real estate, by adoption of the trust device. ..." Henry G. Henn & John R. Alexander, Laws of Corporations § 58, at 117 (3d ed. 1983).*

common-law trust. See business trust. Massachusetts trust. See business trust. trust account. See CLIENT TRUST ACCOUNT, trust agreement. See declaration of trust (2) under DECLARATION (1).

trustbuster. 1, A person --- esp. a federal officer --- who seeks the dissolution of business trusts under the antitrust laws. See business trust under TRUST (4).

trust certificate. See EQUIPMENT TRUST CERTIFICATE. trust company. See COMPANY. trust corporation. See trust company under COMPANY.

trust deed. 1. See declaration of trust (2) under DECLARATION (1). 2, See deed of trust under DEED, trust de son tort (da sawn [or son] tor(t]). See constructive trust under TRUST.

trust distribution. See DISTRIBUTION.

trustee (truh-stee). 1. (17c) 1. One who stands in a fiduciary or confidential relation to another; esp., one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. • Generally, a trustee's duties

are to convert to cash all debts and securities that are not qualified legal investments, to reinvest the cash in proper securities, to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary, in accordance with the directions contained in the trust instrument. [Cases: Trusts C-> 133, 171]

bare trustee. A trustee of a passive trust. • A bare trustee has no duty other than to transfer the property to the beneficiary. See passive trust under TRUST.

corporate trustee. (1852) A corporation that is empowered by its charter to act as a trustee, such as a bank or trust company.

indenture trustee. A trustee named in a trust indenture and charged with holding legal title to the trust property; a trustee under an indenture.

joint trustee. See COTRUSTEE.

judicial trustee. (18c) A trustee appointed by a court to execute a trust.

quasi-trustee. (1830) One who benefits from a breach of a trust to a great enough degree to become liable as a trustee.

successor trustee. (1866) A trustee who succeeds an earlier trustee, usu. as provided in the trust agreement. [Cases: Trusts § 169, 243.]

testamentary trustee (tes-ta-men-ta-ree or -tree). (1811) A trustee appointed by or acting under a will; one appointed to carry out a trust created bya will. [Cases: Wills § 681,]

township trustee. One of a board of officers to whom, in some states, a township's affairs are entrusted. [Cases: Towns §=28,]

trustee ad litem (ad l1-tem or -tam). (1921) A trustee appointed by the court.

trustee de son tort (da sawn [or son] tor[t]). (1857) A person who, without legal authority, administers a living person's property to the detriment of the property owner. See constructive trust under TRUST. [Cases: Trusts C->170.]

trustee ex maleficio (eks mal-a-fish-ee-oh). (1837) A person who is guilty of wrongful or fraudulent conduct and is held by equity to the duty of a trustee, in relation to the subject matter, to prevent him or her from profiting from the wrongdoing.

2. Bankruptcy. A person appointed by the U.S. Trustee or elected by creditors or appointed by a judge to administer the bankruptcy estate during a bankruptcy case. • The trustee's duties include (1) collecting and reducing to cash the assets of the estate, (2) operating the debtor's business with court approval if appropriate to preserve the value of business assets, (3) examining the debtor at a meeting of creditors, (4) filing inventories and making periodic reports to the court on the financial condition of the estate, (5) investigating the debtor's financial affairs, (6) examining proofs of claims and objecting to improper claims, (7) furnishing information relating to the bankruptcy to interested parties, and (8) opposing discharge through bankruptcy, if advisable. A trustee is appointed or elected in every Chapter 7 case, and is appointed in every Chapter 12 and Chapter 13 case under the Bankruptcy Code. A trustee is not appointed or elected in a Chapter 11 case unless the court finds that a trustee is needed and appoints one. In most Chapter 11 cases, the bankruptcy estate is administered by the debtor in possession, rather than by a trustee. The role of a bankruptcy trustee varies depending on the type of bankruptcy case. 11 USCA §§ 701-03, 1104, 1202. --- Also termed (in sense 2) bankruptcy trustee; trustee in bankruptcy. See UNITED STATES TRUSTEE. [Cases: Bankruptcy (>3001-3011,]

interim trustee. A bankruptcy trustee appointed to perform all the functions and duties of a trustee until the regular trustee is selected and qualified. • Before the meeting of creditors, the interim trustee often preliminarily investigates the debtor's assets and financial affairs. [Cases: Bankruptcy § 3002.]

3, DIRECTOR (2). 4. Parliamentary law. An officer who audits an organization's finances.

trustee, vb. (1818) 1. To serve as trustee. 2. To place (a person or property) in the hands of one or more trustees. 3. To appoint (a person) as trustee, often of a bankrupt's estate in order to restrain a creditor from collecting moneys due. 4. To attach (the effects of a debtor) in the hands of a third person.

trustee. U.S. See UNITED STATES TRUSTEE. trustee bank account. See Totten trust under TRUST.

trustee in bankruptcy. See TRUSTEE (2). trustee process. See FACTORIZING PROCESS.

trusteeship. 1. The office, status, or function of a trustee. 2. Int'l law, Administration or supervision of a territory by one or more countries, esp. under a U.N. trusteeship council. Cf. MANDATE (6).

trust estate. See CORPUS (1). trust ex delicto. See constructive trust under TRUST. trust ex maleficio. See constructive trust under TRUST.

trust fund. (18c) The property held in a trust by a trustee; corpus (1), [Cases: Trusts § 1.] common trust fund. (1852) A trust fund set up within a trust department to combine the assets of numerous small trusts to achieve greater investment diversification. ¢ Common trust funds are regulated by state law.

pooled-income fund. See POOLED-INCOME FUND.

trust-fund doctrine. (1892) The principle that the assets of an insolvent company, including paid and unpaid subscriptions to the capital stock, are held as a trust fund to which the company's creditors may look for payment of their claims. • The creditors may follow the property constituting this fund, and may use it to reduce the debts, unless it has passed into the hands of a bona fide purchaser without notice. --- Also termed trust-fund theory. [Cases: Corporations § 544(2).]

trust indenture. See INDENTURE.

Trust Indenture Act. A federal law, enacted in 1939, designed to protect investors of certain types of bonds by requiring that (1) the SEC approve the trust indenture, (2) the indenture include certain protective clauses and exclude certain exculpatory clauses, and (3) the trustees be independent of the issuing company. 15 USCA §§ 77aaa et seq. • The Act is administered by the U.S. Securities and Exchange Commission. [Cases: 'Securities Regulation § =29.10-29.14.]

trust indorsement. See INDORSEMENT.

trust in invitum (in in-vI-tam). See constructive trust under TRUST.

trust instrument. See declaration of trust (2) under DECLARATION (1).

trust legacy. See LEGACY.

trust officer. See OFFICER (1).

trustor. (1855) One who creates a trust; SETTLOR (1). trust ownership. See OWNERSHIP.

trust power. See beneficial power under POWER (5). trust process. See PROCESS.

trust property. See CORPUS (1).

trust receipt. 1. A pre-UCC security device --- now governed by Article 9 of the Code --- consisting of a receipt stating that the wholesale buyer has possession of the goods for the benefit of the financier. • Today there must usu. be a security agreement coupled with a filed financing statement. [Cases: Chattel Mortgages C9; Sales § 454,] 2. A method of financing commercial transactions by which title passes directly from the manufacturer or seller to a banker or lender, who as owner delivers the goods to the dealer on whose behalf the banker or lender is acting, and to whom title ultimately goes when the banker's or lender's primary right has been satisfied.

trust relationship. See RELATIONSHIP.

trust res (reez or rays). See CORPUS (1).

trust territory. See TERRITORY.

trust under will. See testamentary trust under TRUST